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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 702

HARBOR TOWING CORPORATION,
Petitioner,

vs.

LUKE R. PARKER,
Owner of the
M/V "RUTH CONWAY"
and
SWIFT & COMPANY,
Respondents.

BRIEF ON BEHALF OF RESPONDENT LUKE R. PARKER OWNER OF M/V RUTH CONWAY IN OPPOSITION TO PETITION

GEORGE W. P. WHIP,
Counsel for Respondent,
Luke R. Parker.

The Daily Record Co., Baltimore 3, Md.

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This brief is filed in opposition to a Petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit which affirmed the decision of the United States District Court for the District of Maryland. The District Court's opinion is reported in 75 F. Supp. 514 and will be found in the record at page 111. The opinion of the Court of Appeals will be found in 171 F. (2) 416 and on page 154 of the record.

I.

DISCUSSION OF THE FIRST FOUR POINTS OF PETITIONER'S BRIEF WHICH CONCERN THE INTERPRETATION OF "PRIVITY OR KNOWLEDGE" AS USED IN THE LIMITATION STATUTES

The first four points in Petitioner's brief concern privity or knowledge as used in the limitation statutes. Petitioner complains that the decision of the District Court which was affirmed by the Court of Appeals was in conflict with this Court's decisions, particularly its decision in *Coryell v. Phipps*, 317 U. S. 406, 87 L. Ed. 363, 63 S. Ct. 291, in respect thereto.

The District Court saw and heard all of the witnesses including Mr. George E. Rogers, President and General Manager of Harbor Towing Corporation, the Petitioner (Rogers R. 80, 103). Among other things, the Court held that the tug HUSTLER was solely at fault for the collision, that her master had no license, was incompetent and grossly lacking in knowledge of the inland rules of navigation and that the weight of the credible evidence showed that Petitioner should have known that the tug's master was not fully competent for the work in hand. The Court held further that the tug HUSTLER was of insufficient power to tow the Barge No. 110 and that Petitioner should have known that a more powerful tug was required (Opinion R. 118-120). In affirming the District Court, the Court of Appeals said, "The incompetency of Captain Smith is clearly demonstrated and on the record before us there was ample ground for imputing knowledge of this incompetency to Harbor Towing Corporation", and that "Strong credence of the lack of power on the part of the tug HUSTLER to handle properly the barge on the trip through the canal is lent by the whole picture of the facts surrounding this collision" (Opinion R. 157-158).

In *Coryell v. Phipps, supra,* this Court held that the burden of proving lack of privity or knowledge is upon him who is seeking the benefit of the limitation statutes, that privity like knowledge turns on the facts of particular cases and that the concurrent findings by two courts in respect to such matters would be accepted by the Supreme Court. And see *Just v. Chambers,* 312 U. S. 385, 85 L. Ed. 906, 61 S. Ct. 687.

The following cases are pertinent.

McGill et al. v. Michigan S.S. Co. et al., 144 F. 788 (C.C.A. 9th) cert. den. 27 S. Ct. 782, 203 U. S. 593, 51 L. Ed. 332;

Eastern S.S. Corporation v. Great Lakes Dredge & Dock Co., 256 F. 497 (C.C.A. I), cert. dism., 40 S. Ct. 8, 250 U. S. 676, 63 L. Ed. 1202;

The SEVERANCE, 152 F. (2) 916 (C.C.A. 4), cert. den., 328 U. S. 853, 90 L. Ed. 1626.

II.

DISCUSSION OF THE FIFTH POINT OF PETITIONER'S BRIEF

In the fifth point of Petitioner's brief, Petitioner complains that both the District Court and the Court of Appeals failed to enforce statutes relating to licensed officers. But this is not a criminal or disciplinary proceeding. It is a civil suit in Admiralty for damages and Captain Dorman, master of the CONWAY, was a competent and experienced master with an excellent reputation who had navigated the Chesapeake and Delaware Canal many times (Parker R. 7, 8; Conway R. 19, 20; Horsman R. 21). Among other things, Judge Coleman sitting in the District Court found that the master of the CONWAY had had long experience in navigation and a reputation as a careful, successful navigator, that the CONWAY's engineer made a very favorable impression as a witness and no basis was disclosed for attacking his

credibility, that the matter of their licenses had no causal connection with the collision and that there was no fault on the part of the CONWAY (Opinion R. 113, 120, 117). The Court of Appeals affirmed the District Court and this Court should not disturb or review the concurrent judgment of these two courts. See the following cases:

Michael U. Boehmer v. Pennsylvania Railroad Company, 40 S. Ct. 409, 252 U. S. 496, 64 L. Ed. 680;
Just v. Chambers, supra;
Coryell v. Phipps, supra.

The Courts have held that if an officer is competent the mere fact that he holds no license or holds a restricted license should not condemn his vessel in a collision case.

The VANCOUVER, 28 Fed. Case 958, case No. 16838;
The BLUE JACKET, 144 U. S. 371, 12 S. Ct. 711, 36 L. Ed. 469;
The WRESTLER, 144 F. 334 (C.C.A. 2d);
The ALICE M. DREW, 11 F. (2) 376, Aff. 11 F. (2) 377 (C.C.A. 2d);
The CHARLOTTE, 51 F. 455 (Dist. Ct. Md.);
The GRATITUDE v. The EUTAW, 14 F. 479 (E. D. Pa.);
The SAN JUAN, 1927 A.M.C. 384.

III.

THE PETITION SHOULD BE DENIED

We submit that Petitioner has stated no reason for the granting of certiorari and its Petition, therefore, should be denied.

Respectfully submitted,

GEORGE W. P. WHIP,
Counsel for Respondent,
Luke R. Parker.